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EXAMINER	
BAYARD, DJENANE M	
ART UNIT	**PAPER NUMBER**
2141	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/075,051	WANG ET AL.	
	Examiner	Art Unit	
	Djenane M. Bayard	2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 December 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,20-22,39-41 and 43* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4, 20-22, 39-41 and 43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This is in response to communication filed on 12/19/07 in which claims 1-4, 20-22, 39-41 and 43 are pending.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-4, 39-41 and 43 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035

Response to Arguments

3. Applicant's arguments with respect to claims 1-4, 20-22, 39-41 and 43 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-4, 20-22 and 40-41are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,981029 to Menditto et al in view of U.S. Patent Application No. 2003/0023744 to Sadot et al.

a. As per claims 1 and 20, Menditto et al teaches a system for allocating a resource in a network comprising: first logic in the network for determining if any of a plurality of persistence policies, comprising at least one first persistence policy and at least one second persistence policy, is applicable to a service request, and, if so, allocating the resource to the request based on application of the persistence policy determined to be applicable (See col. 6, lines 53-67); the first logic configured so that: when a content-aware service request is received, the first logic determines if the at least one first persistence policy is applicable (See col. 6, lines 65-67, *if the request traffic qualifies for content processing it is routed to an appropriate content gateway processor where the content of the request is processed)*; when a non-content aware service request is received, the first logic determines if the at least one second persistence policy is

applicable (See col. 6, lines 53-60); when the content-aware of service request is received but it is determined that the first persistence policy is inapplicable, the first logic determines if the at least one second persistence policy is applicable (See col. 10, lines 42-45); wherein the first logic is shared by and supports both content-ware and non-content aware service request (See col. 5, lines 16-21); However, Menditto et al fails to teach a second logic in the network for allocating the resource to the request based on application of a load balancing policy only if none of the plurality of persistence policies is determined to be inapplicable as determined by the first logic.

Sadot et al teaches a second logic in the network for allocating the resource to the request based on application of a load balancing policy only if none of the plurality of persistence policies is determined to be inapplicable as determined by the first logic (See page 3, paragraph [0035]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Sadot et al in the claimed invention of Menditto et al in order to select a server to receive at least one of the client messages, at least partially responsive to the contents of the memory unit, and to forward the at least one of the client messages to the selected server (See page 2, paragraph [0020]).

b. As per claim 2, Menditto et al in view of Sadot et al teaches the claimed invention as described above. However, Menditto et al fails to teach wherein the first logic determines if a persistence policy is applicable to a service request having through consideration of whether or

not an allocation exists or recently expired for an originator the service request (See page 3, paragraph [0034-0035]).

Sadot et al teaches wherein the first logic determines if a persistence policy is applicable to a service request having through consideration of whether or not an allocation exists or recently expired for an originator the service request (See page 3, paragraph [0034-0035]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Sadot et al in the claimed invention of Menditto et al in order to select a server to receive at least one of the client messages, at least partially responsive to the contents of the memory unit, and to forward the at least one of the client messages to the selected server (See page 2, paragraph [0020]).

c. As per claims 3 and 21, Menditto et al teaches a system for allocating a resource, in a network, to a resource request, the request having an originator based on application of a persistence policy comprising: first logic in the network for determining whether an allocation exists or recently expired for the originator of the resource request, based on application of any of a plurality of persistence policies, comprising at least one first persistence policy and at least one second persistence policy, to the request, and, if so, identifying the resource which is the subject of the existing or recently expired allocation (See col. 6, lines 53-67): the first logic configured so that: when a content-aware resource request is received, the first logic determines whether an allocation exists or recently expired for the originator of the resource request by applying the at least one first persistence policy, or the at least one second persistence policy when the at least one first persistence policy is determined to be inapplicable (See col. 6, lines

65-67, *if the request traffic qualifies for content processing it is routed to an appropriate content gateway processor where the content of the request is processed*); when a non-content-aware resource request is received, the first logic determines whether an allocation exists or recently expired for the originator of the resource request by applying the at least one second persistence policy (See col. 6, lines 53-60); wherein the first logic is shared by and supports both content-aware and non-content-aware resource request(See col. 5, lines 16-21); However, Menditto et al fails to teach a second logic in the network for allocating the resource, once identified, to the resource request

Sadot et al teaches a second logic in the network for allocating the resource, once identified, to the resource request (See page 3, paragraph [0035]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Sadot et al in the claimed invention of Menditto et al in order to select a server to receive at least one of the client messages, at least partially responsive to the contents of the memory unit, and to forward the at least one of the client messages to the selected server (See page 2, paragraph [0020]).

d. As per claims 4 and 22, Menditto et al in view of Sadot et al teaches the claimed invention as described above. Furthermore, Menditto et al teaches wherein the resource request is derived from or represented by a packet (See col. 5, lines 53-56).

e. As per claim 40, Menditto et al in view of Sadot et al teaches the claimed invention as described above. However, Menditto et al fails to teach wherein the at least one first persistence

policy comprises at least one session-based persistence policy, and the at least one second persistence policy comprises at least one client-based persistence policy.

Sadot et al teaches wherein the at least one first persistence policy comprises at least one session-based persistence policy, and the at least one second persistence policy comprises at least one client-based persistence policy (See page 3, paragraph [0034-0035]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Sadot et al in the claimed invention of Menditto et al in order to select a server to receive at least one of the client messages, at least partially responsive to the contents of the memory unit, and to forward the at least one of the client messages to the selected server (See page 2, paragraph [0020]).

f. As per claim 41, Menditto et al teaches a system for allocating a resource in a network comprising: first logic in the network for determining if any of a plurality of persistence policies, comprising at least one cookie-based persistence policy, at least one session-based persistence policy, and at least one client-based persistence policy, is applicable to a service request, and, if so, allocating the resource to the request based on application of the persistence policy determined to be applicable (See col. 4, lines 18-47); the first logic configured so that: when a content-aware service request is received, the first logic determines if either the at least one cookie-based or at least one session-based persistence policy is applicable (See col. 6, lines 65-67); when non-content-aware service request is received, the first logic determines if the at least one client-based persistence policy is applicable (See col. 6, lines 53-60); when the first

type of service request is received but it is determined that both the at least one cookie-based persistence policy and the at least one session-based persistence policy are inapplicable, the first logic determines if the at least one client-based persistence policy is applicable (See col. 10, lines 42-45); However, Menditto et al fails to teach a second logic in the network for allocating the resource to the request based on application of a load balancing policy only if none of the plurality of persistence policies is determined to be applicable as determined by the first logic.

Sadot et al teaches a second logic in the network for allocating the resource to the request based on application of a load balancing policy only if none of the plurality of persistence policies is determined to be applicable as determined by the first logic. (See page 3, paragraph [0035]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Sadot et al in the claimed invention of Menditto et al in order to select a server to receive at least one of the client messages, at least partially responsive to the contents of the memory unit, and to forward the at least one of the client messages to the selected server (See page 2, paragraph [0020]

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,981029 to Menditto et al in view of U.S. Patent Application No.2003/0023744 to Sadot et al as applied to claim1 above, and further in view of U.S. Patent No. 6,351812 to Datar et al.

a. As per claim 39, Menditto et al in view of Sadot et al teaches the claimed invention as described above. Furthermore, Menditto et al in view of Sadot et al fails to teach wherein the at least on first persistence policy comprises at least one cookie-based persistence policy, and the at least one second persistence policy comprises at least one client-based persistence policy.

Datar et al teaches one cookie-based persistence policy, and the at least one second persistence policy comprises at least one client-based persistence policy (See col. 7, lines 32-54).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Datar et al in the claimed invention of Menditto et al in view of Sadot et al in order to examine the status of information provided by the client and determine if it is adequate based on application-appropriate policies regarding the freshness of the information (See col. 4, lines 44-48).

8. Claim 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over U U.S. Patent No. 6,981029 to Menditto et al in view of U.S. Patent Application No.2003/0023744 to Sadot et

al as applied to claim1 above in view of U.S. Patent Application No. 2002/0199014 to Yang et al.

a. As per claim 43, Menditto et al in view of Sadot et al teaches the claimed invention as described above. However, Menditto et al in view of Sadot et al fails to teach wherein the first type of resource request is content-aware, and the second type of resource request is non-content-aware.

Yang et al teaches wherein the first type of resource request is content-aware, and the second type of resource request is non-content aware (See paragraph [0012]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Yang et al in the claimed invention of Sadot et al in order to enable intelligent request routing (See paragraph [0012]).

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Djenane M. Bayard whose telephone number is (571) 272-3878. The examiner can normally be reached on Monday- Friday 5:30 AM- 3:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Djenane Bayard

Patent Examiner

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